

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Tuesday, September 9, 2003

**The Kiva
City Hall
Scottsdale, Arizona**

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CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Tuesday, September 9, 2003 in the Kiva, City Hall, at 5:11 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ned O'Hearn
Council Members David Ortega, Tom Silverman, Robert Littlefield,
Wayne Ecton, and Cynthia Lukas

Also Present: City Manager Jan Dolan
City Attorney Brad Woodford
City Clerk Carolyn Jagger

Public Comment - NONE

Minutes

SPECIAL MEETINGS
August 25, 2003
August 26, 2003

REGULAR MEETINGS
August 25, 2003
August 26, 2003

COUNCILMAN ORTEGA MOVED TO APPROVE SPECIAL MEETING MINUTES FOR AUGUST 25, 2003 AND AUGUST 26, 2003; AND REGULAR MEETING MINUTES OF AUGUST 25, 2003 AND AUGUST 26, 2003. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

CONSENT AGENDA

1. E4 Liquor License

Request: Consider forwarding an approval recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for a new restaurant location.

Location: 4282 E. Drinkwater Blvd.

Reference: 48-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619,
jfisher@ScottsdaleAZ.gov

Councilman Ecton explained that he is a little concerned that this item requires a conditional use permit; however, there is no draft for the permit in the information provided to Council. He questioned if this is appropriate. Kroy Ekblaw explained that the use permit speaks to how the

business chooses to run the establishment. For the liquor license, they have DRB (Design Review Board) approval for the shell improvements. No permit has been issued for interior improvements. As part of that review process, staff would ensure compliance with all zoning and restaurant requirements.

Mr. Ekblaw confirmed for Councilman Ecton that this procedure is unusual but not unheard of.

Mayor Manross opened public comment.

Joseph D. Goforth, 6916 E. 5th Ave., spoke on behalf of Scottsdale Civic One LLC. He urged that this matter be continued due to the fact that this application through its parking study appears to take into account all of the available parking spaces for the strip mall. The delay would allow time to revise the parking study to accurately reflect the land use distribution and uses within the entire center.

Mayor Manross closed public testimony.

Mr. Ekblaw explained for Mayor Manross that staff reviewed the parking study and agreements associated with parking on the property with the city attorney's office to ensure compliance with the ordinance. He noted that staff is comfortable with the liquor license approval. As part of the permitting process, staff will ensure that all zoning ordinances are addressed. Secondly, staff informed the applicant that they must resolve any outstanding private agreements with other property owners.

Councilman Ecton questioned the status of the information requested from staff that might help Council to establish different types of guidelines such as how many liquor licenses should be allowed within an area. Ms. Dolan explained that staff is working on some things along with determining legalities of certain options.

2. Twisted Vine Gourmet Deli Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing restaurant location. This request is due to a change in ownership of the business.

Location: 3360 N Hayden Rd

Reference: 53-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

3. REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 7

4. Caffè Portobello Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing restaurant location. This request is due to a change in ownership of the business.

Location: 10401 E McDowell Mountain Ranch Rd

Reference: 55-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

5. REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 8

6. Mancusos Restaurant Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for a new restaurant location.

Location: 32527 N Scottsdale Rd Ste 101

Reference: 57-LL-2003

Staff Contacts: Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

7. Restaurant Hapa Extension of Premises

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a permanent extension of premises for an establishment currently operating with a series 12 (restaurant) liquor license.

Reference: 20-EX-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

8. REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 9

9. Chevron Oil Stop Conditional Use Permit

Request: Consider a conditional use permit for an automotive repair facility on a .43 +/- acre parcel located at 7555 E Camelback Road with Highway Commercial (C-3) zoning.

Location: 7555 E Camelback Rd

Reference: 8-UP-2003

Staff Contact(s): Al Ward, Senior Planner, 480-312-7067, award@scottsdaleaz.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Councilman Ecton questioned the normal disposal method for oil in an operation like this. He asked if there is a requirement that there hasn't been leakage into the ground from the former operations on the site. He asked for clarification on the type of repairs that would be conducted on the site. Randy Grant explained that the oil is recycled and stored on site only as long as necessary. He noted that the state regulates and maintains files on site contamination. Typically, any lender would require a certification that the site is clean prior to lending on the site. Regarding repairs, the type of repairs that are proposed for the business are very light repairs, i.e., no engine overalls, gasket repairs, etc.

10. ReinventED Conditional Use Permit

Request: Consider a conditional use permit for a private/charter school on a 11.9 +/- acre parcel located at 9181 E Bell Road with Industrial Park, Planned Community District (I-1 PCD) zoning.

Location: 9181 E Bell Rd Ste 102

Reference: 11-UP-2003

Staff Contact(s): Al Ward, Senior Planner, 480-312-7067, award@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

*****11. Chalfin Residence Easement Abandonment Moved to Last Item on Regular Agenda**

12. Ayoub Residence Easement Abandonment

Request: Consider the following:

1. Abandon a 40-foot roadway easement along the Mountain View Road alignment.
2. Dedicate a 15-foot public trail easement along the southern property boundary.
3. Dedicate a 1-foot non-vehicular access easement along Mountain View Road.
4. Adopt Resolution No. 6346 vacating and abandoning a portion of roadway easement.

Location: 11421 E Arabian Park Dr

Reference: 5-AB-2003

Staff Contact(s): Cheryl Sumners, Senior Planner, 480-312-7834, csumners@ScottsdaleAZ.gov;

Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

13. Santuario Final Plat

Request: Approve Final Plat for a 16-lot gated custom home community on a 20+/- acre parcel.

Location: 24995 N Scottsdale Rd

Reference: 26-PP-2002

Staff Contact(s): Bill Verschuren, Senior Planner, 480-312-7734, bverschuren@ScottsdaleAZ.gov;

Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Councilman Ecton questioned if the wall around the development along Scottsdale Road is going to be a solid wall or a wall with breaks where wildlife can enter and exit. Mr. Ekblaw explained that the wall is solid with small breaking points in it for the washes. He clarified that the wall is designed to allow movement of water and small animals. He also noted that there are some openings to the south so there would be opportunities for animals to travel through the area.

14. CONTINUED TO SEPTEMBER 23, 2003. PLEASE SEE PAGE 6

15. CONTINUED TO SEPTEMBER 23, 2003. PLEASE SEE PAGE 6

16. CONTINUED TO SEPTEMBER 23, 2003. PLEASE SEE PAGE 7

17. CONTINUED TO SEPTEMBER 23, 2003. PLEASE SEE PAGE 7

18. Streetlight Improvement District for Trails North at Horseman's Park

Request: Adopt Resolutions No. 6348 and No. 6349, creating a Streetlight Improvement District.

Location: between 98 & 100th St., south of Bell Road

Reference: 4-PP-2002#2

Staff Contact(s): Kurt Jones, Interim Current Planning Director, 480-312-2524, kjones@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

19. Trails North at Horseman's Park Final Plat

Request: Approve a Final Plat for 112 residential lots on a 40+/- acre parcel.

Location: between 98 & 100th St., south of Bell Road

Reference: 4-PP-2002#2

Staff Contact(s): Kurt Jones, Interim Current Planning Director, 480-312-2524, kjones@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

20. Jupiter Assets Business Park Rezoning

Request: Approve the following:

1. To rezone from Single Family Residential, Planned Community District (R1-35 PCD) to Industrial Park, Planned Community District (I-1 PCD) on a 5 +/- acre parcel located at the northwest corner of 90th Street and Bahia Drive.
2. To adopt Ordinance No. 3524 affirming the above rezoning.

Location: Northwest corner of 90th Street & Bahia Drive

Reference: 6-ZN-2003

Staff Contact(s): Kira Wauwie AICP, Project Coordination Manager, 480-312-7061, kwauwie@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

21. Trails North at Horseman's Park Abandonment

Request: Adopt Resolution Number 6369 effectuating the approved abandonment case 2-AB-2002. The required stipulations that needed to be met prior to adopting the Resolution have been satisfied.

Location: South of Bell Road between 98th & 100th Streets

Reference: 2-AB-2002

Staff Contact(s): Cheryl Sumners, Senior Planner, 480-312-7834, csumners@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

COUNCILMAN SILVERMAN MOVED TO APPROVE CONSENT AGENDA ITEMS 1, 2, 4, 6, 7, 9, 10, 12, 13, 18, 19, 20, AND 21. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

CONTINUANCES

14. DC Ranch Parcel 1.17 Final Plat

Request: Approve the Final Plat for 167 residential lots on a 47+/- acre parcel.

Location: Planning Unit 1 at DC Ranch (Union Hills Dr. east of Pima, west of 94th St.)

Reference: 4-PP-2003

Staff Contacts: Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

15. DC Ranch Parcel 1.13 Final Plat

Request: Approve a Final plat for DC Ranch Parcel 1.13.

Location: Planning Unit 1 at DC Ranch - Parcel 1.13

Reference: 3-PP-2003

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

16. DC Ranch Parcel 1.14 Final Plat

Request: Approve a Final Plat for 77 residential lots on a 22 +/- acre parcel.

Location: Southeast corner of 94th St. & Union Hills Dr.

Reference: 7-PP-2003

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

17. DC Ranch Parcel 1.11 Final Plat

Request: Approve the Final Plat for 87 residential lots on a 37+/- acre parcel.

Location: East side of 94th St. between Union Hills Dr. & Bell Rd.

Reference: 8-PP-2003

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

COUNCILWOMAN LUKAS MOVED TO CONTINUE ITEMS 14, 15, 16, AND 17 TO SEPTEMBER 23, 2003. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

ITEMS REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION

3. Devils Martini Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer of a series 6 (bar) State liquor license for a new bar location which previously operated with a series 12 (restaurant) license under the business name Carvers.

Location: 10825 N Scottsdale Rd

Reference: 54-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

Councilman Ecton explained that he is not happy with this proposal. He stated that granting a liquor license is a delicate business and the Council should feel comfortable that the business will be managed appropriately. He noted that one of the applicants has three DUIs. The license is being requested for a new establishment in a growing entertainment district.

He explained that he checked on code violations on the owner's downtown location. The violations primarily were related to trash and landscaping. He noted that he is comfortable with the fact that the owners corrected the infractions. He was uncomfortable, however, with the fact that within the last year and a half there have been 29 police calls in the vicinity.

Councilman Ecton explained that Council received a letter earlier today from one of the homeowner groups in the area expressing concern over the amount of traffic and noise that would be created by this type of business.

Mayor Manross opened public testimony.

Richard Geddes, 10825 N. Scottsdale Road, explained that he has had one DUI since getting married a number of years ago. He assured Council that the punishment imposed upon him by his wife was enough to make him take it seriously. He noted that the business has a committed relationship with the neighborhood and ensures that any trash is cleaned up each evening. He stated his belief that the vicinity calls are unrelated since he runs an upscale operation that is open Thursday, Friday, and Saturday nights. He explained that he also received a letter expressing concern over live entertainment and off property sales. He assured Council that there is no live entertainment other than DJ's that don't speak over a microphone.

Mayor Manross closed public testimony.

COUNCILMAN ORTEGA MOVED TO FORWARD A FAVORABLE RECOMMENDATION TO THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL FOR A PERSON AND LOCATION TRANSFER OF A SERIES 6 (bar) STATE LIQUOR LICENSE FOR A NEW BAR LOCATION WHICH PREVIOUSLY OPERATED WITH A SERIES 12 (RESTAURANT) LICENSE UNDER THE BUSINESS NAME CARVERS CASE 54-LL-2003. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 6/1 (W.E.).

5. On the Rocks Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person transfer of a series 6 (bar) State liquor license for an existing bar location.

Location: 2515 N Scottsdale Rd

Reference: 56-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review Director, 480-312-7619, jfisher@scottsdaleaz.gov

Councilman Ecton explained that he has some of the same concerns with this application as previously stated. The applicant has several violations including three DUIs, two misdemeanor assaults, and one misdemeanor possession of marijuana. He questioned the dependability of the management of these operations. He noted that the city is still receiving complaints in the entertainment districts.

Councilwoman Lukas explained that those type of activities do not preclude someone from applying for a liquor license. She asked staff for clarification. Mr. Ekblaw confirmed that they would not preclude anyone from applying for a liquor license. Detective Fritz explained that either a recent misdemeanor DUI (within 5 years) or felony DUIs would preclude an applicant from being granted a liquor license. He clarified that a felony DUI would constitute 3 DUI arrests within a certain period of time or an arrest over a certain blood alcohol level. He further clarified by noting that a misdemeanor charge is not a deniable offense for a liquor license by state law.

Councilwoman Lukas emphasized that the last DUI offense was in 1998.

Councilman Silverman explained that he couldn't argue with any of the concerns expressed by Councilman Ecton. He stated his concern that the downtown area will be 90% bars in the future which would be devastating for the tourism industry.

Mayor Manross pointed out that this application is a transfer of a liquor license not a new facility. She also noted that there are a variety of liquor licenses so Council would have to consider which type of licenses they are most concerned about in the future.

Councilman Ecton affirmed that he would continue to object to situations like this where he feels the city is not getting responsible business owners and management. He noted that his objections would continue until staff presents mechanisms to Council to control these types of situations. Mr. Gawf explained that staff has been investigating a use permit process for bars which should be presented to Council in October.

COUNCILWOMAN LUKAS MOVED TO FORWARD A FAVORABLE RECOMMENDATION TO THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL FOR A PERSON TRANSFER OF A SERIES 6 (bar) STATE LIQUOR LICENSE FOR AN EXISTING BAR LOCATION CASE 56-LL-2003. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 6/1 (W.E.).

8. Flicka's Cantina Conditional Use Permit

Request: Consider a conditional use permit for Live Entertainment on a 1 +/- acre parcel located at 2003 N Scottsdale Road with Highway Commercial (C-3) zoning.

Location: 2003 N Scottsdale Rd

Reference: 3-UP-2003

Staff Contacts: Bill Verschuren, Senior Planner 480-312-7734, bverschuren@ScottsdaleAZ.gov Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Councilman Ortega declared a conflict of interest and left the dais prior to discussion of this case.

Councilwoman Lukas requested a short presentation.

Kurt Jones displayed an aerial illustrating the location of the establishment requesting the permit. He explained that the live entertainment request is proposed within the interior of the building. He noted that staff is recommending approval of the application.

Councilwoman Lukas requested information on the interaction with the surrounding community. Mr. Jones explained that the applicant has conducted some community outreach. He stated that the site was visited by code enforcement in early spring. As a result, the establishment removed all outdoor speakers. He noted that the city has not had any more complaints since that time.

Tom Rief, 4413 N. Saddlebag Trail, spoke as the applicant at the request of Council. He explained that he sent out a notification flyer to all property owners within 500' of the restaurant. After the formal application was submitted, he sent out a second letter to all property owners within 750'. He explained that this notification was done in addition to the typical notification process that the city staff conducts. He acknowledged that there were a few calls received regarding noise complaints; however, he explained his belief that the noise originated from a neighboring business which also has outdoor evening activity.

Mayor Manross opened public testimony.

Michael Merrill, 5713 E. Vernon Avenue, explained that he has visited the establishment on occasions. He stated that he has gone out to the site many times due to noise complaints and

never observed any noise originating on the site. He stated that the business is well maintained behind a block wall. He also felt it was worth mentioning that the owner of the establishment supports local sports.

Mayor Manross closed public testimony.

Councilman Ecton explained that, based upon his investigation, the business has not been neighborhood friendly. He noted that they had unlicensed outside speakers and were cautioned on numerous occasions to keep their outside door closed. Neighbors have reported that patrons were not moving along after closing. The business also had various code violations. In the past four or five years, the establishment was cited and fined for various infractions relating to the sale of liquor. He noted that there were 47 Scottsdale police calls in the area over the last two years.

COUNCILMAN ECTON MOVED TO DENY A CONDITIONAL USE PERMIT FOR LIVE ENTERTAINMENT ON A 1 +/- ACRE PARCEL LOCATED AT 2003 N SCOTTSDALE ROAD WITH HIGHWAY COMMERCIAL (C-3) ZONING. THE MOTION DIED FOR LACK OF A SECOND.

In response to a request from Councilman Silverman, the applicant explained that since the business was renovated, the restaurant portion of the business has increased dramatically.

He explained that the number of police reports have declined drastically since a neighboring establishment closed. He acknowledged that the business has had some violations with minors due to the minors being in the establishment without their parents. He stressed that the minors were not served alcohol. He stated that the owners are working with the liquor board to ensure compliance. Six doormen have been added and have been through training on liquor regulations. He stated that the establishment hasn't had a police visit since May. He acknowledged that the business did have outside speakers that they thought were allowed under a grandfather clause. Once he found that the speakers were not allowed, they were removed along with all the wiring.

He also elaborated on the establishment's involvement with charity and local sports.

Councilwoman Lukas asked staff if they are confident that the noise issue has been addressed. Mr. Jones confirmed that staff feels the issues have been addressed.

Vice Mayor O'Hearn expressed his opinion that Council must take the track record of the applicant seriously. He pointed out that this issue is a land use issue as opposed to an evaluation of individuals. He asked staff for clarification on the rules for challenging a conditional use permit. Mr. Ekblaw explained that the process to consider violations for use permits was changed in the spring. He stated that a complaint could be brought before the Zoning Administrator or to Council.

Vice Mayor O'Hearn explained that if some of the past issues repeat themselves, there is a process that allows individuals to present their complaints to Council rather than to the Board of Adjustment. Due to the level of comfort with that change, he felt that moving forward with the case makes sense.

Councilman Littlefield pointed out that although the change in the process referenced to by Vice Mayor O'Hearn was very controversial, this case highlights the wisdom of the decision. He explained that Council is going to take the applicant at his word that he fixed the problems. He

noted that if the promises aren't kept, there is a way for the neighbors to bring their concerns to Council for consideration to revoke the permit.

VICE MAYOR O'HEARN MOVED TO APPROVE A CONDITIONAL USE PERMIT FOR LIVE ENTERTAINMENT ON A 1 +/- ACRE PARCEL LOCATED AT 2003 N SCOTTSDALE ROAD WITH HIGHWAY COMMERCIAL (C-3) ZONING (CASE 3-UP-2003). COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 5/1 (W.E.) (D.O. – COI-ARS 38-501)

REGULAR AGENDA

22. Desert Vista Abandonment

Request: Consider the following:

1. Abandon the north 30-foot right-of-way of Parcels 217-12-009D, E, and G, the Desert Vista proposed church/school site, except the west 18 feet.
2. Adopt Resolution Number 6343, reserving a public access easement over the west 15 feet and the south 15 feet of the subject 30 feet.

Location: 18201 N 94th St

Reference: 7-AB-2003

Staff Contact(s): Pete Deeley, Project Coordination Manager, 480-312-2554, pdeeley@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Please refer to the presentation and discussion under item 23. Since item 22 and 23 are closely related, the presentation and discussion included both items.

COUNCILMAN ORTEGA MOVED TO **ABANDON** THE NORTH 30-FEET RIGHT-OF-WAY OF PARCELS 217-12-009D, E AND G, THE DESERT VISTA PROPOSED CHURCH/SCHOOL SITE, EXCEPT THE WEST 18 FEET, AND **ADOPT** RESOLUTION NUMBER 6343, RESERVING A PUBLIC ACCESS EASEMENT OVER THE WEST 15 FEET AND THE SOUTH 15 FEET OF THE SUBJECT 30 FEET WHICH IS CASE 7-AB-2003. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

23. Desert Vista Charter School Conditional Use Permit

Request: Approve a conditional use permit for a private/charter school on a 7.5 +/- acre parcel located at 18201 N 94th Street with Single Family Residential, Environmentally Sensitive Lands (R1-35 ESL) zoning.

Location: 18201 N 94th St

Reference: 7-UP-2003

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Kurt Jones introduced items 22 and 23 with one slide presentation, which has been outlined below. He explained that the site is just east of Loop 101 at the point where the 101 curves west towards Phoenix. There are single-family homes proposed along the entire north border of the site and along the west side of 94th Street.

The proposal for the abandonment is on the north side of the site. The proposal is requesting a 30' ROW (right-of-way) abandonment with a reserve 15' public access easement over it. The 18' ROW on the east side of 94th Street would also remain. He displayed a graphic illustrating that the easement isn't necessary for access to the parcels to the north since there will be a private street within the DC Ranch property to allow access.

He also noted that the ROW isn't necessary for any connections or trails across the site.

Use Permit Criteria

No nuisances, internally-oriented
Traffic accommodated with the planned street network
Parking and setbacks meet Ordinance
Compatible with area schools integrated with neighborhoods

Planning Commission

The Planning Commission recommends approval, subject to the stipulations

Discussion Points:

- One citizen spoke regarding student population and curriculum
- Clarification on street network/timing
- President of Ironwood HOA spoke with no objections to the use permit proposal

Use Permit

Charter School Use Permit

7.5 acre property
High School (grades 9-12)
12 classrooms
2 shifts, 300 students on campus
No outdoor or evening events
Access from 94th Street only
Shared with a future church

Neighborhood Involvement

Mayor Manross requested that the applicant briefly speak on behalf of his application.

Todd Anderson, 7529 Desert Vista, spoke as the pastor of the church. He explained that they have gone to great lengths to contact the communities around the property to ensure extensive community involvement. He stated that the church did its best to share the vision and values with the community.

Mayor Manross opened public testimony.

Nick Luongo, 9542 E. Rockwood Drive, spoke in opposition to the project. He explained that he has tried on various occasions to obtain details on the school's proposed curriculum and targeted student population without success. He felt this project would be unjust since many Ironwood Village residents do not have knowledge of the plan. He recommended that the city replace the postcard mailing system with a fact sheet distribution.

Mayor Manross closed public testimony.

In response to a request from Mayor Manross, Paul Wright and John Blair with the Leona Group clarified some of the issues. Mr. Wright explained that the Leona Group itself is a private management company that provides backend services to schools throughout the United States. The services provided to schools include Human Resources, Accounting, Payroll, Financial Services, etc. The schools are indicative of the communities they serve with their mission being to serve students who are not well served by traditional schools.

Mr. Wright clarified for Mayor Manross that the proposed school is a public charter school, which would be free to all children. He noted that he would be the contact person and would be available to answer neighborhood concerns if contacted.

Councilman Silverman wanted to state, for the record, that an acquaintance spoke highly of the Leona Group's reputation. In response to questions from Councilman Silverman, Mr. Blair explained that the Leona Group has 14 high schools and 3 middle schools throughout the valley and Tucson. Mr. Wright estimated that the majority of the students who would be attending this school would originate from the community itself. He noted that the schools do not provide large quantities of transportation nor are typically very large.

Councilman Silverman requested further clarification as to why it would be difficult to answer Mr. Luongo's questions. Mr. Wright and Mr. Blair explained that they were not aware of the concerns until recently. Mr. Wright assured everyone that anyone with questions or concerns should contact him directly.

Responding to questions from Mayor Manross, Mr. Andersen explained that he was new to the notification process so he followed the city's regulations and staff's recommendations to further communicate the plans to the neighborhood. He noted that he called the Ironwood Homeowner's Association early on in an attempt to "go the extra mile" upon staff's recommendation.

In response to questions from Councilman Ecton, Mr. Luongo clarified that he had trouble getting his questions answered to his satisfaction.

Councilman Ortega expressed his belief that schools are an amenity. He noted that the school and church are compatible uses that illustrate smart planning. He explained that a public school cannot discriminate against people.

COUNCILMAN ORTEGA MOVED TO APPROVE A CONDITIONAL USE PERMIT FOR A PRIVATE/CHARTER SCHOOL ON A 7.5 +/- ACRE PARCEL LOCATED AT 18201 N 94TH STREET WITH SINGLE FAMILY RESIDENTIAL, ENVIRONMENTALLY SENSITIVE LANDS (R1-35 ESL) ZONING, LOCATED AT 18201 N 94TH ST (CASE 7-UP-2003) FINDING NO OBJECTIONS TO THE USE PERMIT CRITERIA. VICE MAYOR O'HEARN SECONDED THE MOTION (WHICH CARRIED 7/0).

Vice Mayor O'Hearn explained that the students who would be attending a school are irrelevant when it comes to consideration of a conditional use permit. He stated that Council is restricted in the issues relative to an application for a conditional use permit.

He explained that it isn't often that Council has an opportunity to allow a school to be placed into a neighborhood without any immediately adjoining development. He assured everyone that

there is a process in place for neighbors to follow if the school doesn't live up to the conditions of the use permit.

Councilwoman Lukas expressed that it is unfortunate that communication broke down over the summer; however, it is not sufficient reason to delay the project. She stated her belief that this would be an appropriate use.

Councilman Littlefield questioned if the applicant is concerned that the church and school would be under the flight path of the airport. Pastor Andersen acknowledged that he was aware of that fact before he purchased the property.

Councilman Ecton explained that Mr. Luongo's major issue seems to be the quality of the school's participants, although it may be impossible to answer that question at this time. He stated his support for the motion but feels uncomfortable that perhaps the city hasn't guided the applicant closely enough to ensure that all the dialog that should have occurred did.

Councilman Silverman explained that although he understands Mr. Luongo's concerns, Council does not have any reason to deny the conditional use permit tonight. He assured everyone that, if there are problems created by the school, the Council would address them.

After further discussion, THE MOTION CARRIED 7/0.

*****11. Chalfin Residence Easement Abandonment (Pulled From the Consent Agenda)**

Request: Consider the following:

1. Abandon the west 33 feet and the north 8 feet of the south 33 feet General Land Office (GLO) patent roadway and public utility easements for parcel 217-32-037C.
2. Adopt Resolution No. 6316, reserving a trail easement over the subject north 8 feet of the south 33 feet.

Location: 12580 E Gold Dust Avenue

Reference: 4-AB-2003

Staff Contact(s): Pete Deeley, Project Coordination Manager, 480-312-2554, pdeeley@ScottsdaleAZ.gov; Kroy Ekblaw, General Manager Planning & Development Services Department, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Kurt Jones presented a brief slide presentation to introduce item 11, which has been outlined below.

**Chalfin Residence
Abandonment Request**

- Abandon the west 33 feet and the north 8 feet of the south 33 feet General Land Office (GLO) patent roadway and public utility easements.
- Located at 12580 E. Gold Dust Ave., east of the 125th Street alignment.
- Adopt Resolution Number 6316, reserving a public trail easement over the subject north 8 feet of the south 33 feet.

Project Discussion

- Subject 33 feet GLO patent easements dedicated in 1954.
- A 25 foot right-of-way for Gold Dust Ave. was dedicated in 1985.
- Property to the west has already abandoned their GLO easements in 1999 (case 23-AB-99).
- City Department/Division participants concur with this abandonment request, with the Trails Department requesting an 8 foot reservation along Gold Dust Ave.
- All adjacent property owners were contacted and have no objection to the abandonment

Key Issues

- Eliminates the subject GLO easements from public use.
- Eliminates a building encroachment into an unnecessary easement.
- Maintains consistency with city street standards as approved by the Transportation Department.
- An 8 foot Public Trail easement is reserved over the subject north 8 feet along Gold Dust Ave.

Planning Commission Recommendation

- Deny 4-1
- Commissioners had concern about using the abandonment process to solve an existing encroachment
- Commissioners also concerned once the easements are abandoned, the property owner will have additional construction within the easement

Staff Recommendation

- Staff recommends approval, subject to the reservation of an 8 foot public trail easement.
- Any additional construction will still have to meet current city setbacks and ordinance requirements.
- Once abandoned, the city makes no determination of any private interest in the abandoned easement.
- Any private interest claim to these easements is viewed similar to an interest such as CC & R, and consequently is not considered a city legal issue, but a matter between private parties.

Per Council's request, Brad Chalfin spoke to his application for the abandonment. He explained that this issue came to his attention when he submitted plans to add an addition to his home. During the process, he discovered that part of his home was built upon a GLO easement. He displayed an aerial photo to

illustrate that a number of abandonments have already occurred in his area and urged Council to be consistent when considering this request.

Responding to questions from Mayor Manross, City Attorney Woodford advised Council to look at this case as to whether or not there is a use for the easement from a public standpoint.

Councilman Ortega explained that he finds, according to the city's trail plan, the easement is not needed. He questioned if there is any city liability on an easement. Attorney Woodford explained that he does not believe that the city has any liability to any private property owner who wishes to enforce his rights. He stated that there is very little liability for the city as the easement currently exists; however, there would be less liability if it were abandoned.

COUNCILMAN ORTEGA MOVED TO ABANDON THE WEST 33 FEET AND THE NORTH 8 FEET OF THE SOUTH 33 FEET GENERAL LAND OFFICE (GLO) PATENT ROADWAY AND PUBLIC UTILITY EASEMENTS FOR PARCEL 217-32-037C (CASE 4-AB-2003) AND ADOPT RESOLUTION NO. 6316, RESERVING A TRAIL EASEMENT OVER THE SUBJECT NORTH 8 FEET OF THE SOUTH 33 FEET. COUNCILWOMAN LUKAS SECONDED THE MOTION (WHICH CARRIED 7/0).

Vice Mayor O'Hearn expressed his opinion that Council cannot overlook the concerns of the Planning Commission. He questioned how the encroachment happened in the first place. Mr. Grant explained that he doesn't have the answer to that question.

Vice Mayor O'Hearn questioned if there is a way that this individual could be granted a non-conforming approved use for the 5' that the existing building is currently encroaching on the easement. Mr. Grant explained that the applicant isn't in violation of the zoning ordinance, so there isn't a case for the Board of Adjustment to review. The encroachment onto an easement is a concern due to the possibility of activity that must be conducted in the easement. Certainly the city wouldn't want to be placed in a position to have to "take down" someone's building.

Mr. Grant confirmed for Vice Mayor O'Hearn that it would be possible for Council to abandon 5' of the easement to eliminate the encroachment that currently exists. Vice Mayor O'Hearn explained that he is more inclined to grant the partial abandonment.

Mayor Manross questioned the purpose of granting a partial abandonment if the city doesn't need the easement.

Vice Mayor O'Hearn explained his belief that the Planning Commission made some good points as why they looked for alternative solutions. He felt this solution would alleviate the situation without eliminating the easement.

Councilman Littlefield questioned how this situation came about. The applicant explained that the house was built in 1978. He stated that, although he visited the county to obtain answers to his questions, he was unsuccessful. He questioned the original purpose of the easement and if it is valid at this time.

Mayor Manross clarified that her concerns include: 1) that all the city's needs are met in the area, 2) that the city has ability to locate, connect, and maintain trails, and 3) if the proposed action is legal. She noted that the answer to all her questions is yes so she will support the motion.

Councilman Littlefield acknowledged that he also read the minutes from the Planning Commission meeting. He felt the real issue was the question of asking for forgiveness rather than permission. So if the commission approved the abandonment, it would almost be like saying that people can build on the easement and the city will forgive them. He noted if the city really doesn't need the easement, there would be no point in abandoning part of the easement. He felt either the city needs the easement or it doesn't.

Councilman Ortega pointed out that the homeowner is an innocent party. He explained that the city's trail plan is utilizing 124th Street, which is three blocks over. He stated his support of abandoning the easement as posted.

Councilman Ecton questioned if there is any possibility that the city would need the land for any reason. Ed Gawf explained that his test for abandonments is to look at the *possibility* not the *probability* that the city would need the land. He stated that staff concluded that there is no possibility that the city would need this easement in the future. He also clarified that the house was built on county land before it was annexed into the city.

Vice Mayor O'Hearn reiterated that the issue is that the home is built in the existing easement. He stated his preference that there be a different way to rectify the situation. He briefly recited the history of GLO easements and their purpose. He stated his belief that it is Council's responsibility to strip away the easements once it is determined that the land isn't necessary for any city use. He explained that if the only way Council is going to agree to rectify the current situation is to abandon the entire easement, he would support the motion.

After further discussion, THE MOTION CARRIED 7/0.

Public Comment - None

City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 7:14 P.M.

SUBMITTED BY:

Ann Eyerly, Council Recorder

REVIEWED BY:

Carolyn Jagger, City Clerk

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 9th day of September 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this _____ day of September 2003.

CAROLYN JAGGER
City Clerk